



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Doc. No. AO-SC-16-0136; AMS-SC-16-0074; SC16-982-1]

**Hazelnuts Grown in Oregon and Washington; Recommended
Decision and Opportunity to File Written Exceptions to
Proposed Amendment of Marketing Order No. 982**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and opportunity to file exceptions.

SUMMARY: This recommended decision proposes amendments to Marketing Order No. 982 (order), which regulates the handling of hazelnuts grown in Oregon and Washington. The proposed amendments are based on the record of a public hearing held on October 18, 2016, in Wilsonville, Oregon. Two amendments are proposed by the Hazelnut Marketing Board (Board), which is responsible for local administration of the order. The proposed amendments would add both the authority to regulate quality for the purpose of pathogen reduction and the authority to establish different regulations for different markets. In addition, the Agricultural Marketing Service (AMS) proposed to make any such changes as may be necessary to the order to conform to any amendment that may result from the public hearing. The

proposals are intended to aid in pathogen reduction and meet the needs of different market destinations.

DATES: Written exceptions must be filed by [Insert date 30 days after the date of publication in the Federal Register].

ADDRESSES: Written exceptions should be filed with the Hearing Clerk, U.S. Department of Agriculture, Room 1031-S, Washington, DC 20250-9200; Fax: (202) 720-9776 or via the internet at <http://www.regulations.gov>. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. Comments will be made available for public inspection in the Office of the Hearing Clerk during regular business hours or can be viewed at: <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, Post Office Box 952, Moab, UT 84532; Telephone: (202) 557-4783, Fax: (435) 259-1502, or Julie Santoboni, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Melissa.Schmaedick@ams.usda.gov or Julie.Santoboni@ams.usda.gov.

Small businesses may request information on this proceeding by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Richard.Lower@ams.usda.gov.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on September 27, 2016, and published in the September 30, 2016, issue of the **Federal Register** (81 FR 67217).

This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Orders 12866, 13563, and 13175. Additionally, because this rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See the Office of Management and Budget's (OMB) Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' " (February 2, 2017).

Notice of this rulemaking action was provided to tribal governments through the Department of Agriculture's (USDA) Office of Tribal Relations.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed amendments to Marketing Order 982 regulating the handling of hazelnuts grown in Oregon and Washington and the opportunity to file written exceptions thereto. Copies of this decision can be obtained from Melissa Schmaedick, whose address is listed above.

This recommended decision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation and amendment of marketing agreements and orders (7 CFR part 900).

The proposed amendments are based on the record of a public hearing held on October 18, 2016, in Wilsonville, Oregon. Notice of this hearing was published in the **Federal Register** on September 30, 2016 (81 FR 67217). The notice of hearing contained two proposals submitted by the Board and one submitted by USDA.

The proposed amendments were recommended by the Board on May 27, 2015, and were submitted to USDA on May 16, 2016. After reviewing the proposals and other information submitted by the Board, USDA made a determination to

schedule this matter for hearing. The Board's proposed amendments to the order would: 1) add authority to regulate quality for the purpose of pathogen reduction; and 2) add authority to establish different outgoing quality regulations for different markets.

USDA proposed to make any such changes as may be necessary to the order to conform to any amendment that may be adopted, or to correct minor inconsistencies and typographical errors.

Ten witnesses testified at the hearing. The witnesses represented hazelnut producers and handlers in the production area, as well as the Board, and one witness was from the USDA. The industry witnesses all supported the proposed amendments, while the USDA witness remained neutral. One dissenting opinion was received by AMS after the notice of hearing was published in the Federal Register. In accordance with section 900.16 of the Rules of Practice governing this proceeding (7 CFR 900.16), the ex parte communication, which opposed both proposals, was entered into the record, and is available on the USDA website.

The industry witnesses favored the two proposals. The first proposal would add authority to the order to regulate quality for the purpose of pathogen reduction. The second

proposal would allow for the establishment of different outgoing quality regulations for different markets.

The authority to regulate quality does not currently exist in the order. Witnesses at the hearing explained that, if added to the order, the authority to regulate quality would be specifically for the purpose of reducing pathogen contamination in hazelnuts. According to witness testimony, Salmonella, E. coli, and Listeria, are all present in the soil and are chief among the pathogens that the industry would like to reduce. The proposed authority could also assist the industry in complying with the Food and Drug Administration's (FDA) food safety guidelines under the Food Safety Modernization Act of 2011 (FSMA).

The proposal to add authority to establish different outgoing quality regulations for different markets was supported by witnesses who spoke of the need to meet hazelnut purchasers' differing pathogen reduction treatment requirements. In addition, witnesses pointed out the potential cost savings for handlers by allowing different outgoing quality standards for different markets.

At the conclusion of the hearing, the Administrative Law Judge established a deadline of December 2, 2016, for the submission of corrections to the transcript, and January 1, 2017, as a deadline for interested persons to

file proposed findings and conclusions or written arguments and briefs based on the evidence received at the hearing. No written arguments or briefs were filed.

Material Issues

The material issues presented on the record of hearing are as follows:

1. Whether to amend §§ 982.12, 982.40, 982.45, and 982.46 to add authority to regulate quality for the purpose of pathogen reduction. Corresponding changes would also revise the subheading "Grade and Size Regulation" prior to § 982.45, and the section heading for § 982.45, "Establishment of grade and size regulations," to include quality.

2. Whether to amend § 982.45 to add authority to establish different outgoing regulations for different markets.

3. Whether any conforming changes need to be made as a result of the above proposed amendments. Conforming changes may also include non-substantive, typographical errors.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof.

Material Issue Number 1 - Authority to Regulate Quality

Sections 982.12, 982.40, and 982.45 ("Merchantable hazelnuts," "Marketing policy and volume regulation," and "Establishment of grade and size regulations," respectively) should be amended to authorize quality regulation for the purpose of pathogen reduction by inserting the words "and quality" after "grade, size," in each section, respectively. Section 982.45 should also be amended by adding a new paragraph (c), "Quality regulations." Additionally, the heading prior to § 982.45 should be revised to read "Grade, Size, and Quality Regulation." Lastly, § 982.46, "Inspection and certification," should be amended by adding paragraph (d). These proposed amendments to the Order would authorize the Board to regulate the quality of hazelnuts.

Currently, § 982.45 of the order states that the Board has authority to regulate grade and size; there is no mention of quality. Witnesses explained that the authority to regulate quality would allow them to regulate product attributes that fall outside the traditional scope of "grade" and "size."

According to the record, current hazelnut grade and size standards correspond with USDA standards developed in 1975 for inshell hazelnuts and in 1980 for hazelnut kernels. The attributes currently regulated under grade and condition standards include, but are not limited to, characteristics of damaged hazelnuts, such as: stains, adhering husk, mold, decay, rancidity, and insect injury. According to the record, if the order were amended to regulate quality, "quality" as used in the order and regulations would mean the reduction of pathogens. Witnesses explained that product contaminated by pathogens reduces that product's inherent quality and usability in the market. Therefore, the authority to test for and require action to reduce pathogens in hazelnuts would result in a higher quality product.

Witnesses also testified about the importance of quality checks on product during the handling process to ensure that the potential for pathogen contamination is minimized. This could be achieved by implementing kill-steps throughout the handling of hazelnuts and testing for pathogens in the end product. A kill-step is a measure taken, such as heat treatment, to mitigate contamination or the transfer of pathogens during product handling.

The Food Safety Steering Committee (FSSC), a committee of the Board, is conducting research to identify best methods for achieving a 5-log reduction in the presence of pathogens through various kill-steps. A log reduction is a mathematical term used to show the number of pathogens eliminated. A 5-log reduction means lowering the number of pathogens by 100,000-fold. For example, if there were 1,000,000 organisms present, the kill-step would need to reduce the number of organisms to 10 to achieve a 5-log reduction in pathogens. Current industry methods, or "kill-steps," used to achieve a 5-log pathogen reduction include: treatment with propylene oxide (PPO), steam pasteurization, roasting, and other heat treatments.

Witnesses discussed the need to regulate the levels of Salmonella, E. coli, and Listeria, which are naturally occurring bacteria. Currently, only steam pasteurization is approved by the FDA as a kill-step for hazelnuts. While a 5-log reduction is neither required under the marketing order, nor by existing FSMA guidelines, it is currently used by the FDA for other crops and therefore is used by FSSC as an acceptable minimum.

According to witnesses, authority to propose mandatory quality regulation that could reduce the potential for a widespread illness that could negatively affect the

industry as a whole is necessary. Witnesses testified about an outbreak of Salmonella in 2009, which resulted in a recall of hazelnuts. The recall was due to detection of Salmonella at a plant that processed different varieties of nuts that were comingled with hazelnuts. This outbreak spurred research on contamination, the formation of the FSSC, and resulted in the industry's determination that regulation of quality for pathogen reduction is necessary in order to safeguard the industry from future pathogen-related food scares.

The proposed authority could also enable the Board to establish mandatory quality inspections, thereby ensuring that all handlers are fully participating in proper pathogen reduction measures. Such regulation would build consumer confidence and lower the likelihood of the need for another product recall.

Witnesses stated that the anticipated immediate cost impact on the industry as a result of this proposal would be minimal. If approved in a referendum by producers, the addition of "quality" to the list of attributes that can be regulated under the order would not result in new, immediate regulation. Any new regulation would need to be developed and vetted as a proposal, approved and recommended by the Board, published by USDA as a proposed

rule, commented on by the public, and receive USDA approval prior to being implemented.

If quality regulation were recommended by the Board and approved by USDA, such regulation would address the industry's desire to reduce the potential for pathogen contaminations. For example, if hazelnuts were to be tested for Salmonella under the authority to regulate quality, it would benefit the industry by ensuring that high levels of this bacteria do not enter the market. The ability to regulate quality would assure customers of the industry's oversight of product quality. As such, witnesses explained that any potential costs of future regulation would be outweighed by the benefits of pathogen reduction in the market.

According to witnesses, hazelnuts are currently inspected for grade and size. The addition of another inspection parameter would not result in significant, increased costs. Additionally, according to the record, the majority of handlers are already voluntarily implementing a kill-step or are shipping to a customer who will perform their own kill-step, thereby eliminating the need for handlers to perform one themselves.

Should the authority to regulate quality be implemented, witnesses discussed the supporting rules and

regulations that would need to be developed. Witnesses indicated that handlers would likely be required to submit treatment plans each year, identifying treatment processes, facilities, and documentation procedures. Future regulations would also include compliance and verification provisions, including handler verification plans and record retention requirements to substantiate compliance with the regulations. The Board would be charged with ensuring compliance with any new regulations.

If this proposal were implemented, the Board could establish quality standards for all Oregon and Washington hazelnut handlers, thereby ensuring uniform quality of product and eliminating the free-rider problem. A free-rider is someone who benefits from goods or services, but does not pay for them. In the case of hazelnuts, most handlers treat hazelnuts for pathogen reduction, incurring associated costs and building the reputation of a safe product. Handlers who do not treat hazelnuts for pathogen reduction not only benefit from the reputation built by others, at no cost, but by not treating their hazelnuts they also put the entire industry at risk of a product recall.

Overall, witnesses anticipated that quality regulations could result in increased returns for both

producers and handlers as, in some markets, a higher price would be paid for quality-certified product. Therefore, the potential benefit of higher prices, in addition to reduced contamination, would outweigh the costs, as described above.

Finally, USDA is recommending one clarifying change to the language in the proposed new paragraph 982.45(c), which would add authority to regulate quality. USDA has determined that the language as presented in the Notice of Hearing was redundant and, therefore, confusing. USDA has revised the proposed language in the new paragraph § 982.45 (c) so that its intent is more clearly stated. This new language is included in the proposed regulatory text of this recommended decision.

No testimony opposing this proposed amendment was given at the hearing.

For the reasons stated above, it is recommended that §§ 982.12 and 982.40 should be amended, § 982.45 should be amended by adding a new paragraph (c), the heading prior to § 982.45 should be revised to include "quality," and a new paragraph (d) should be added to § 982.46, to add quality regulation authority under the order.

Material Issue Number 2 - Different Market Regulations

Section 982.45, "Establishment of grade and size," should be further amended to provide authority to establish different regulations for different markets by adding a new paragraph (d), "Different regulations for different markets." This would add authority to establish different outgoing quality regulations for different markets.

The order does not currently allow for different standards to be applied to hazelnuts shipped to different foreign markets. This proposed authority would allow the Board to develop quality regulations that are best suited for particular market destinations. For example, it would be redundant to treat exports to the People's Republic of China (China), the largest export market for hazelnuts, with a kill-step, because they are roasted and brined in China prior to sale. Witnesses explained that if hazelnuts sold to China were subject to a kill-step prior to exportation, the additional roasting and brining treatment in China would result in a brittle, over-processed product which would no longer be desirable to consumers.

Witnesses clarified that this proposal would not result in new, immediate regulations; it would only result in the authority to establish different quality regulations for different market destinations under the order. If this proposal were implemented, the Board could make

recommendations for different regulations for different market destinations to USDA. Any new regulation would need to be developed and vetted as a proposal, approved and recommended by the Board, published by USDA as a proposed rule, opened for public comment, and receive USDA approval prior to being implemented.

Witnesses stated that if any market-specific regulations were to be implemented as a result of this authority, the anticipated impact on producers and handlers would be negligible. Different regulations for different market destinations would not hinder the export of hazelnuts. Witnesses explained that many hazelnut handlers shipping to export markets already voluntarily meet the unique product specifications of those export markets to meet consumer tastes and demands.

No testimony opposing this proposed amendment was given at the hearing.

For the reasons stated above, it is recommended that § 982.45, "Establishment of grade and size regulations," should be further amended by adding a new paragraph (d) to provide authority to establish different quality regulations for different market destinations.

Small Business Considerations

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit.

Hazelnut Industry Background and Overview

According to the hearing transcript, there are currently over 800 hazelnut growers in the production area. According to National Agricultural Statistics Service (NASS) data presented at the hearing, 2015 grower receipts averaged \$2,800 per ton. With a total 2015 production of 31,000 tons, the farm gate value for hazelnuts in that year totaled \$86.8 million (\$2,800 per ton multiplied by 31,000 tons). Taking the total value of production for hazelnuts and dividing it by the total number of hazelnut growers provides a return per grower of \$108,500. A small grower as defined by the Small Business Administration (SBA) (13

CFR 121.201) is one that grosses less than \$750,000 annually. Therefore, a majority of hazelnut growers are considered small entities under the SBA standards. Record evidence indicates that approximately 98 percent of hazelnut growers are small businesses.

According to the industry, there are 17 hazelnut handlers, four of which handle 80 percent of the crop. While market prices for hazelnuts were not included among the data presented at the hearing, an estimation of handler receipts can be calculated using the 2015 grower receipt value of \$86.8 million. Multiplying \$86.8 million by 80 percent ($\$86.8 \text{ million} \times 80 \text{ percent} = \69.4 million) and dividing by four indicates that the largest hazelnut handlers received an estimated \$17.3 million each. Dividing the remaining 20 percent of \$86.8 million, or \$17.4 million, by the remaining 13 handlers, indicates average receipts of \$1.3 million each. A small agricultural service firm is defined by the SBA as one that grosses less than \$7,500,000. Based on the above calculations, a majority of hazelnut handlers are considered small entities under SBA's standards.

The production area regulated under the order covers Oregon and Washington. According to the record, Eastern Filbert Blight has heavily impacted hazelnut production in

Washington. One witness stated that there currently is no commercial production in that state. As a result, production data entered into the record pertains almost exclusively to Oregon.

NASS data indicates bearing acres of hazelnuts reached a fifteen-year high during the 2013-2014 crop year at 30,000 acres. Acreage has remained steady, at 30,000 bearing acres for the 2015-2016 crop year. By dividing 30,000 acres by 800 growers, NASS data indicate there are approximately 37.5 acres per grower. Industry testimony estimates that due to new plantings, there are potentially 60,000 bearing acres of hazelnuts, or an estimated 75 bearing acres per hazelnut grower.

During the hearing held October 18, 2016, interested parties were invited to present evidence on the probable regulatory impact of the proposed amendments to the order on small businesses. The evidence presented at the hearing shows that none of the proposed amendments would have a significant economic impact on a substantial number of small agricultural producers or firms.

Material Issue Number 1 - Adding Authority to regulate quality

The proposal described in Material Issue 1 would amend § 982.45 to authorize the Board to establish minimum

quality requirements and \$ 982.46 to allow for certification and inspection to enforce quality regulations.

Presently, the Board is charged with assuring hazelnuts meet grade and size standards. The Board also has the authority to employ volume control. If finalized, this proposal would authorize the Board to propose quality regulations that require a treatment to reduce pathogen load prior to shipping hazelnuts. Witnesses supported this proposal and stated that treatment regulation would not significantly impact the majority of handlers since most handlers already treat product prior to shipment. Witness testimony indicated that the proposed amendment would lower the likelihood of a product recall incident and the associated negative economic impacts. Witnesses noted that the proposed amendment would give the Board flexibility to ensure consumer confidence in the quality of hazelnuts.

It is determined that the additional costs incurred to regulate quality would be greatly outweighed by the increased flexibility for the industry to respond to changing quality regulation and food safety. There is expected to be no financial impact on growers. Mandatory treatment requirements should not cause dramatic increases in handler operating costs, as most already voluntarily

treat hazelnuts. Handlers bear the direct cost associated with installing and operating treatment equipment or contract out the treatment of product to a third party.

According to the industry, most domestic hazelnut product is shipped to California for PPO treatment. The cost to ship and treat product is estimated to be 10 cents per pound or less. Using 2014-2015 shipment data, at 10 cents per pound, the cost to ship and treat the 6.5 million pounds of Oregon hazelnuts shipped to the domestic market is not expected to exceed \$650,000. Shipments to foreign markets typically do not require treatment and therefore have no associated treatment costs. Large handlers who wish to install treatment equipment may face costs ranging from \$100,000 to \$5,000,000 depending on the treatment system.

One witness noted that mandatory treatment would benefit the industry by addressing the free-rider situation in which handlers who do not treat the product benefit from consumer confidence while incurring additional risks. Handlers that do treat product absorb all costs of treatment while building the reputation of the industry.

The record shows that the proposal to add authority to establish different outgoing quality requirements for different markets would, in itself, have no economic impact

on producers or handlers of any size. Regulations implemented under that authority could impose additional costs on handlers required to comply with them. However, witnesses testified that establishing mandatory regulations for different markets could increase the industry's credibility and reduce the risk that shipments of substandard product could jeopardize the entire industry's reputation. Record evidence shows that any additional costs are likely to be offset by the benefits of complying with those requirements.

For the reasons described above, it is determined that the costs attributed to the above-proposed changes are minimal; therefore, the proposal would not have a significant economic impact on a substantial number of small entities.

Material Issue Number 2 - Adding Authority for Different Market Regulations

The proposal described in Material Issue 2 would allow for the establishment of different outgoing quality regulations for different markets.

Witnesses testified that allowing different regulations for different markets would likely lower the costs to handlers and prevent multiple treatments of hazelnuts while preserving hazelnut quality.

Certain buyers of hazelnuts do not require prior treatment and perform their own kill-step processes such as roasting, baking or pasteurization. A witness stated that two of the largest buyers of hazelnuts, Diamond of California and Kraft Foods, Inc. choose to treat product after arrival.

Shipments to foreign markets often do not require treatment and are treated after exportation. Testimony indicated that during the 2014-2015 season, of the 9.5 million pounds of kernel hazelnuts shipped to Canada, almost all were further treated by the customers. In conjunction with the proposed quality authority discussed in Material Issue 1, specific regulation could be developed to exempt exported product, subject to further pathogen-reduction treatment in the country of purchase, from mandatory treatment. In Canada, the purchaser, not the handler, is responsible for providing pathogen reduction treatment. Requiring handlers to treat hazelnuts before export would be duplicative in cost and treatment. At 10 cents per pound, it is estimated that on sales to Canada alone, handler savings could reach as much as \$950,000 (9.5 million pounds of shipments multiplied by 10 cents per pound), if exempted from the mandatory treatment requirement. Hazelnuts shipped to China are typically

processed after arrival and also do not necessitate treatment by handlers in the United States.

China is a major export market for inshell hazelnuts. According to the hearing transcript, from 2011-2015, 54 percent of inshell hazelnuts were exported. The total value of inshell exports was approximately \$41,340,780, if 54 percent is multiplied by the \$76,557,000 total hazelnut exports. In 2015-2016 China received 90 percent of U.S. inshell hazelnut exports. The 2015-2016 value of U.S. hazelnut exports to China is estimated to be approximately \$37,206,702, or 90 percent of the value of all U.S. inshell exports. Oregon hazelnuts compete primarily with Turkish (kernel) and Chilean (inshell) hazelnuts. Testimony indicates that multiple treatments of hazelnuts would likely affect the quality of hazelnuts. Allowing for different regulations for different markets would help Oregon and Washington hazelnuts compete in foreign markets and maintain U.S. market share. It is estimated that 80 to 90 percent of product is already being treated, and thus, the cost has already been incorporated into the price purchasers pay.

One witness noted that shipments to the European Union may require different regulations since this market prefers certain treatment processes.

The record shows that the proposal to add authority to establish different outgoing quality requirements for different markets would, in itself, have no economic impact on producers or handlers of any size. Regulations implemented under that authority could potentially impose additional costs on handlers required to comply with them.

For the reasons described above, it is determined that the benefits of adding authority for different market regulations to the order would outweigh the potential costs of future implementation.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. These amendments are intended to improve the operation and administration of the order and to assist in the marketing of hazelnuts.

Board meetings regarding these proposals, as well as the hearing date and location, were widely publicized throughout the Oregon and Washington hazelnut industry, and all interested persons were invited to attend the meetings and the hearing to participate in Board deliberations on all issues. All Board meetings and the hearing were public forums, and all entities, both large and small, were able to express views on these issues. Finally, interested

persons are invited to submit information on the regulatory impacts of this action on small businesses.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Paperwork Reduction Act

Current information collection requirements for Part 982 are approved by OMB, under OMB Number 0581-0189 - "Generic OMB Fruit Crops." No changes in these requirements are anticipated as a result of this proceeding. Should any such changes become necessary, they would be submitted to OMB for approval.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

Civil Justice Reform

The amendments to the order proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any

State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposal.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15) (A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of entry of the ruling.

Rulings on Briefs of Interested Persons

Briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth in this recommended decision. To the extent that the suggested findings and conclusions filed by interested persons are inconsistent with the findings and conclusions of this recommended

decision, the requests to make such findings or to reach such conclusions are denied.

General Findings

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing agreement and order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(1) The marketing order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The marketing order, as amended, and as hereby proposed to be further amended, regulates the handling of hazelnuts grown in the production area (Oregon and Washington) in the same manner as, and is applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing order upon which a hearing has been held;

(3) The marketing order, as amended, and as hereby proposed to be further amended, is limited in its

application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing order, as amended, and as hereby proposed to be further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of hazelnuts grown in the production area; and

(5) All handling of hazelnuts grown in the production area as defined in the marketing order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because these proposed changes have already been widely publicized, and the Board and industry would like to avail themselves of the opportunity to exercise the new authority. All written exceptions received within the comment period will be considered, and a producer referendum will be conducted before any of these proposals are implemented.

List of Subjects in 7 CFR Part 982

Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

Recommended Further Amendment of the Marketing Order

For the reasons set out in the preamble, 7 CFR part 982 is proposed to be amended as follows:

PART 982 - HAZELNUTS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 982 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Revise § 982.12 to read as follows:

§ 982.12 Merchantable hazelnuts.

Merchantable hazelnuts means inshell hazelnuts that meet the grade, size, and quality regulations in effect pursuant to § 982.45 and are likely to be available for handling as inshell hazelnuts.

3. Amend § 982.40 by revising paragraph (d) to read as follows:

§ 982.40 Marketing policy and volume regulation.

(d) Grade, size, and quality regulations. Prior to September 20, the Board may consider grade, size, and quality regulations in effect and may recommend modifications thereof to the Secretary.

4. Revise the undesignated center heading prior to § 982.45 to read as follows:

GRADE, SIZE, AND QUALITY REGULATION

5. In § 982.45:

- a. Revise the section heading; and
- b. Add new paragraphs (c) and (d).

The revisions should read as follows:

§ 982.45 Establishment of grade, size, and quality regulations.

(c) Quality regulations. For any marketing year, the Board may establish, with the approval of the Secretary, such minimum quality and inspection requirements applicable to hazelnuts to facilitate the reduction of pathogens as will contribute to orderly marketing or will be in the public interest. In such marketing year, no handler shall handle hazelnuts unless they meet applicable minimum quality and inspection requirements as evidenced by certification acceptable to the Board.

(d) Different regulations for different markets. The Board may, with the approval of the Secretary, recommend different outgoing quality requirements for different

markets. The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this provision.

6. Amend § 982.46 by adding paragraph (d) to read as follows:

§ 982.46 Inspection and certification.

(d) Whenever quality regulations are in effect pursuant to § 982.45, each handler shall certify that all product to be handled or credited in satisfaction of a restricted obligation meets the quality regulations as prescribed.

Dated: June 5, 2017.

Bruce Summers
Acting Administrator
Agricultural Marketing Service

BILLING CODE 3410-02 P

[FR Doc. 2017-11946 Filed: 6/9/2017 8:45 am; Publication Date: 6/12/2017]